

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VIRGIL MITCHELL

Case No. 09-11468

Plaintiff,

HONORABLE ARTHUR J. TARNOW
DISTRICT JUDGE

v.

MICHIGAN DEPARTMENT OF CORRECTIONS,

HONORABLE PAUL J. KOMIVES
MAGISTRATE JUDGE

Defendants.

**ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION [81] AND DENYING DEFENDANT BELLINGER'S MOTION
FOR SUMMARY JUDGMENT BASED ON FAILURE TO STATE A CLAIM, OR
ALTERNATIVELY, FOR LACK OF PERSONAL JURISDICTION [52]**

Before the Court is the Magistrate Judge's Report and Recommendation [81] of August 3, 2010. The Report and Recommendation recommends that Defendant Bellinger's Motion for Summary Judgment Based on Failure to State a Claim, or Alternatively, for Lack of Personal Jurisdiction [52] be denied. On August 20, 2010, Defendant Bellinger filed an Objection [85]. Plaintiff did not file a response.

I. STANDARD OF REVIEW

This Court reviews the instant Objection to the Magistrate Judge's Report and Recommendation *de novo*. See 28 U.S.C. § 636(b)(1)(C).

II. ANALYSIS

Defendant Bellinger raises one objection to Magistrate Judge Komives' ruling.¹ He argues that the Magistrate Judge erred in concluding that the case should not be

¹ Although Defendant states in his filing that he is entitled to dismissal based on the statute of limitations..., he ultimately "concedes that he does not have a good faith objection to this portion of the R&R." See Defendant's Objection at 3.

dismissed against him, as he lacked personal involvement in this matter Plaintiff failed to offer evidence to counter counsel's claim that Defendant ever worked at the prison facility.

Defendant's objection is denied. Defendant offers no valid argument casting doubt on the Magistrate Judge's proper conclusion that dismissal at this time would be improper. Defendant's reliance on counsel's statement in a motion brief to establish Defendant's employment status and involvement in the case is misplaced, and the Magistrate Judge was correct in his refusal to base a dismissal on such an assertion.

III. CONCLUSION

The Court has reviewed the record and the parties' pleadings in this case, and being fully advised in the premises,

IT IS ORDERED that the Report and Recommendation [81] of the Magistrate Judge is hereby **ADOPTED**;

IT IS FURTHER ORDERED that Defendant Bellinger's Motion for Summary Judgment based on Failure to State a Claim, or Alternatively, For Lack of Personal Jurisdiction [52] is **DENIED**.

SO ORDERED.

S/ARTHUR J. TARNOW
Arthur J. Tarnow
Senior United States District Judge

Dated: September 16, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 16, 2010, by electronic and/or ordinary mail.

S/LISA M. WARE
Case Manager